

B IN THE HIGH COURT OF THE B
C HONG KONG SPECIAL ADMINISTRATIVE REGION C
D COURT OF FIRST INSTANCE D
E CRIMINAL CASE NO 145 OF 2016 E

F ----- F
G HKSAR G

H v H

I OTIENO Millicent Akoth I
J ----- J

K Before: DHCJ Woo K
L Date: 30 May 2016 at 10.33 am L
M Present: Mr Andrew Cheng, SPP of the Department of Justice, M
N for HKSAR N
O Mr Victor K C Lee, instructed by Fan & Fan, assigned by O
P DLA, for the accused P
Q Offence: Trafficking in a dangerous drug (販運危險藥物) Q

R ----- R
S Transcript of the Audio Recording S
T of the Sentence in the above Case T
U ----- U

V COURT: The defendant, Otieno Millicent Akoth, a 37-year-old V
woman from Kenya, pleaded guilty before a magistrate to a
single charge of trafficking in a dangerous drug, contrary
to section 4(1)(a) and (3) of the Dangerous Drugs
Ordinance, Cap 134, of the Laws of Hong Kong.

The particulars of offence are that on the 4th day of
October 2015, at the Arrival Hall, Hong Kong International
Airport, Chek Lap Kok, Lantau Island in Hong Kong, she
unlawfully trafficked in a dangerous drug, namely 1.07
kilogrammes of a solid containing 544 grammes of cocaine.

Before the magistrate, she also admitted the summary of
facts prepared by the prosecution. The summary reads as
follows:

R "(1) The accused, a 37-year-old Kenyan female, was R
S detained at the Hong Kong International Airport S
T on 4 October 2015 after arrival on a flight from T
U Addis Ababa, although her journey had originated U
V from Burundi. V

(2) A personal and baggage search proved negative.
As internal concealment was suspected, she was

sent to North Lantau Hospital where examination confirmed the presence of foreign objects in her body cavity. She was then transferred to Queen Elizabeth Hospital where she subsequently discharged a total of 100 pellets containing a substance which, after a forensic examination, proved to be a total of 1.07 kilogrammes of a solid containing 544 grammes of cocaine.

(3) US\$408 was seized from the defendant.

(4) In a later record of interview, the accused stated she had been given the pellets to swallow in Burundi and had done so as she was in need of money; she had received US\$4,000 as a reward; she was to travel to the mainland; she knew the pellets contained dangerous drugs but she did not know the type.

(5) At the time of seizure, the cocaine had an estimated retail value of HK\$1,140,620.

(6) Travel movement record reveals the accused last came to Hong Kong on 27 August 2015 and departed on 8 September 2015.

(7) A mainland visa which permits her to enter the mainland before 5 November 2015 and to stay there for 30 days was found in the accused's passport.

(8) The accused had scheduled to fly back to Burundi via the same route on 14 October 2015.

(9) The accused now admits and accepts that she was trafficking in the dangerous drug seized."

In the case of Attorney General v Rojas [1994] 1 HKC 342, the Court of Appeal held that the sentencing guidelines for trafficking in heroin are applicable to trafficking in cocaine.

According to The Queen v Lau Tak Ming & Ors [1990] 2 HKLR 370, as modified in HKSAR v Abdallah Anwar Abbas [2009] 2 HKLRD 437, for trafficking in 400 to 600 grammes of heroin, cocaine being treated equally, the sentence upon conviction after trial should be in the range of 15 to 20 years' imprisonment.

Moreover, the importation of a dangerous drug into Hong Kong involved an international element which is an aggravating factor: see the cases cited in Cross and Cheung, Sentencing in Hong Kong, 7th Edition, pages 627 to 628, and especially the case of HKSAR v Chung Ping Kun

A CACC 85/2014 (2 July 2014); [2014] 6 HKC 106 at page 111
B paragraph 9, where the Court of Appeal suggested a broad
C guideline of enhancement for the international element
D involving between 500 and 1,000 grammes of a dangerous
E drug, being 1 year to 2 years' imprisonment.

F The defendant is a widow, aged 37 years. She has three
G daughters respectively aged 16 years, 8 years and 14
H months. She was willing to traffic in the drug in order to
I earn US\$4,000 so as to cater for the material needs of her
J children.

K She has written letters to the court to tell me that she
L admits that that was wrong and it was extremely stupid of
M her to be so induced. Her younger brother and a daughter
N of hers have also written to seek leniency for her. Father
O John Wotherspoon has also written a letter to me to state
P the defendant's active participation in his campaign to
Q educate and to warn people in Africa, particularly in East
R Africa, from engaging in drug trafficking.

S Drug trafficking is a grave offence and sentencing is
T almost wholly dependent on established guidelines and
U authorities. Save in rare circumstances, personal
V situation matters little, and very little discretion is
left to the sentencer.

Counsel for the defendant has urged on me everything that
can possibly be said in favour of the defendant. The
defendant, a person with clear record in Hong Kong prior to
this offence, has expressed her willingness to provide
information that she possesses to the Hong Kong authorities
about the person who gave her the drug in the present case,
but whether the information is useful will depend on the
eventual outcome.

Considering the above sentencing authorities and all the
circumstances of this case, the starting point should be
imprisonment for a period of 18 years and 7 months. With
an enhancement for the international element of 1 year, the
overall starting point should come to 19 years and 7
months' imprisonment.

As for her willingness to provide useful information to the
Hong Kong authorities, one would have to wait for the
outcome. If it is at all fruitful, she can appeal her
sentence to the Court of Appeal, or seek a reduction from
the Executive. For the time being, no credit can be given
to her.

Due to her clear record and to show leniency for the sake
of her young children, and especially for her active
participation in Father John's campaign, I am prepared to
adopt a reduced starting point of 18 years and 6 months.

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I give the defendant a full one-third discount for her guilty plea which reduces the sentence to 12 years and 4 months.

I accordingly sentence the defendant to a term of imprisonment for 12 years and 4 months.

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